

VIRGINIA:

IN THE CIRCUIT COURT FOR THE
CITY OF ALEXANDRIA

NATIONAL RIFLE ASSOCIATION OF
AMERICA,

Plaintiff,

v.

ACKERMAN MCQUEEN, INC.,

and

MERCURY GROUP, INC.

Defendants.

Civil Case No. **CL19002067**

PLAINTIFF'S COMPLAINT AND JURY DEMAND

Plaintiff the National Rifle Association of America (the "NRA") files this Complaint and Jury Demand against Defendants Ackerman McQueen, Inc. ("Ackerman") and Mercury Group, Inc. ("Mercury" and, collectively with Ackerman, "AMc"), based on personal information as to its own actions and on information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

After collaborating for more than thirty years, the NRA finds itself at odds with its advertising agency and communications firm, AMc. Already embroiled in a separate lawsuit¹ arising from AMc's refusal to furnish agreed business records, the NRA files this action to redress additional, increasingly brazen breaches of duties owed by AMc to the NRA. Over the past year, even as it withheld important documents and information from the NRA, AMc readily shared snippets of confidential and proprietary materials with hostile third parties, including the news media—in a series of sordid, out-of-context “leaks” engineered by AMc to harm its client.

Defendants' actions are especially egregious because communications with the media and the public are AMc's purported area of expertise. For decades, the NRA trusted AMc to shape and disseminate authorized public communications on its behalf, in order to advance the interests of the NRA and its members. During that time, AMc became a valued asset to the NRA and, by extension, the millions of law-abiding gun owners who depend upon the NRA for its Second Amendment advocacy. As part of their professional obligations, AMc and its employees were required to engage with the news media only with the NRA's full consent, operate with complete transparency, and work in alignment with the NRA's leadership team to craft its communications strategy. Of course, these expectations are fundamentals upon which clients and their public relations advisors operate. Trust and loyalty are necessary elements of any such relationship.

Unfortunately, in a remarkable, material breach of that trust, AMc undertook a campaign to tarnish and ultimately destroy the public image of the NRA and its senior leadership. Motivated to avoid scrutiny of their own business activities, a handful of faithless fiduciaries within (and

¹ See *National Rifle Association of America v. Ackerman McQueen, Inc. and Mercury Group, Inc.*, Civil Case No. CL19001757 (Alexandria, Va.).

without) AMc conspired to conceal important information, “kill” any “messenger” who tried to unearth that information, and ultimately wrest control of the NRA by fomenting a (failed) executive coup. The conspiracy led by AMc had a malicious, singular purpose: to derail inquiries by the NRA into AMc’s business and accounting practices. When the NRA ignored AMc’s initial, veiled threats and reiterated its demands for transparency, the agency and its co-conspirators fired escalating salvos that culminated in an extortion threat delivered by an AMc employee, Lt. Col. Oliver North (Ret.), days before the NRA’s Annual Meeting of Members. North’s directive to NRA CEO Wayne LaPierre was simple: withdraw the NRA’s then-pending lawsuit against AMc, resign immediately from the NRA, and support AMc’s chosen leadership slate for the NRA—or be publicly smeared.

As became widely reported, AMc’s attempt to seize control of the NRA brutally failed.² Thereafter the NRA hoped that AMc and its co-conspirators would abandon their illegal conduct and resume faithfully serving the NRA. Instead, Defendants began to deliver on AMc’s extortion threats. In apparent “off-the-record” exchanges with reporters from multiple media outlets, AMc—and others with whom it conspired—cynically leaked selected portions of confidential business records that were curated to convey a misleading, dire picture of the NRA’s finances, operations, and expense-accounting practices. The bitter, insidious irony is that the records leaked by AMc contain some of the same information the NRA had persistently requested from AMc over the course of many months, in an effort to strengthen its own internal controls. When AMc realized it could not hide the information demanded by the Association forever, it maliciously and

² See, e.g., Danny Hakim, *Wayne LaPierre Prevails in Fierce Battle for the N.R.A.* THE NEW YORK TIMES (Apr. 29, 2019), <https://www.nytimes.com/2019/04/29/us/nra-wayne-lapierre-oliver-north.html>; Mark Maremont, *New York Attorney General Probes NRA as Oliver North Exits as President*, THE WALL STREET JOURNAL (Apr. 27, 2019, 7:30pm), <https://www.wsj.com/articles/oliver-north-out-as-nra-president-11556376506>

selectively publicized a subset of its records in a manner designed to suggest improprieties which AMc knew had not actually occurred.

Consistent with its longstanding trust and reliance on AMc, and hopeful that the leaks were executed by rogue employees without the knowledge of AMc's leadership, the NRA sought AMc's help securing sworn declarations from employees who had access to the leaked information—affirming individually that they were not responsible for any unauthorized disclosures. In this way, the NRA sought to narrow the list of individuals potentially responsible for the leaks, as well as stem ongoing confidentiality violations. Unfortunately, AMc's response to the overture came in the form of a terse missive from outside counsel—refusing any cooperation. Although AMc explicitly “warrant[ed] and agree[d] to prevent disclosure of Confidential Information by its employees” under its contract with the NRA, the agency flatly refused to ask any of its employees to affirm they had honored their confidentiality obligations.

For years, the NRA trusted and depended upon AMc to deliver core, critical services. The NRA never expected it would be forced to sue one of its closest collaborators. At this juncture, however, the NRA has no choice. AMc's ongoing violations of its contractual and fiduciary duties are malicious, material, and must be redressed.

PARTIES AND RELEVANT NONPARTIES

1. Plaintiff NRA is a not-for-profit corporation organized under the laws of the State of New York with its principal place of business located in Fairfax, Virginia. The NRA is America's leading provider of gun-safety and marksmanship education for civilians and law enforcement. It is also the foremost defender of the Second Amendment of the United States Constitution. A 501(c)(4) tax-exempt organization, the NRA has over five million members—and its programs reach many millions more.

2. Defendant Ackerman is a nonresident for-profit business corporation organized under the laws of the State of Oklahoma with its principal place of business in Oklahoma City, Oklahoma. Ackerman is an advertising and public relations agency that has counted the NRA among its largest clients for more than thirty years.

3. Defendant Mercury is a nonresident for-profit business corporation organized under the laws of the State of Oklahoma with its principal place of business in Alexandria, Virginia. Mercury is a wholly owned subsidiary of Ackerman which specializes in public-communications strategy, including on behalf of advocacy groups such as the NRA. At all relevant times, Ackerman acted on behalf of both itself and Mercury pursuant to the Services Agreement (defined below) between Ackerman and the NRA.

4. Nonparty Lt. Col. Oliver L. North (Ret.) ("North") is a resident of the State of Virginia and a former president of the NRA. Unbeknownst to the NRA until recently, North is also a full-time employee of Ackerman.

5. Nonparty William Winkler ("Winkler") is a resident of the State of Oklahoma and the chief financial officer of Ackerman.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Ackerman and Mercury pursuant to Virginia Code § 8.01-328.1 because each of Ackerman and Mercury has transacted business in the Commonwealth of Virginia and contracted to supply services in the Commonwealth of Virginia.

7. Venue is proper in this Court because the cause of action set forth herein arose from the transaction of business in Alexandria, Virginia.

8. Additionally, jurisdiction and venue are proper in this court because Ackerman and Mercury have expressly consented to the exclusive jurisdiction and venue of courts sitting in

Alexandria or Fairfax County, Virginia regarding the matters presented herein in the Services Agreement dated April 30, 2017 (as amended May 6, 2018) (the “Services Agreement”).

FACTUAL BACKGROUND

A. For Decades, the NRA Relied on Ackerman To Perform Public Affairs Services Requiring a High Level of Trust.

9. The NRA and AMc have worked closely together since the 1980s. Over that time, the NRA has reposed extensive trust and confidence in AMc to perform services including public relations and strategic marketing; planning and placement of media; management of digital media and websites; and the operation of NRATV, a digital-media platform managed by AMc but frequently perceived by the public as the “voice” of the NRA.³ By its nature, this work is publicly and politically sensitive, and requires the NRA to entrust AMc with confidential (and sometimes privileged) information.

10. Since at least 1999, AMc’s work on behalf of the NRA has been governed by successive incarnations of a Services Agreement containing detailed specifications for how various types of work performed by Ackerman for the NRA should be budgeted and billed. The Services Agreement between the NRA and AMc dated May 1, 1999 (the “Previous Services Agreement”) as well as the current, operative Services Agreement provide that certain categories of services, such as Owned Media and Internet Services, are compensated with an agreed annual fee, while others are required to be invoiced on an *ad hoc* basis based on estimates furnished by AMc and approved by the NRA. Consistent with the sensitive nature of AMc’s services, the Services Agreement strictly limits use and disclosure by AMc, and its individual employees (who are

³ See, e.g., Jeremy W. Peters & Katie Benner, *Where The N.R.A. Speaks First and Loudest*, THE NEW YORK TIMES, February 21, 2018, <https://www.nytimes.com/2018/02/21/us/politics/nratv-nra-news-media-operation.html>.

themselves fiduciaries of the NRA), of information acquired during AMc's work on behalf of the NRA.

11. Specifically, Section IV of the Services Agreement provides that AMc "shall not disclose, directly or indirectly, to any third party, any . . . data, materials or information . . . made known to AMc as a result of AMc's providing [contracted-for services] . . . without the prior express written permission of [the] NRA."⁴ AMc may use the NRA's confidential information "only for the limited purpose of providing its [s]ervices to the NRA,"⁵ and AMc "warrants and agrees to prevent disclosure of Confidential Information by its employees, agents, successors, assigns and subcontractors."⁶

12. Notably, AMc serves as the NRA's agent for several purposes pursuant to the Services Agreement, and, therefore, owes fiduciary duties to the NRA. For example, the Services Agreement provides explicitly that AMc may act "on [the] NRA's behalf," and subject to the NRA's control, with respect to purchasing, planning, and placement of media⁷—activities that require the NRA to entrust AMc with nonpublic information about its communication strategy. In its capacity as the NRA's agent, AMc must demonstrate "the same high standard of good faith and loyalty" to the NRA as would be "required . . . of an attorney to his client."⁸ Indeed, owing to the parties' decades of close collaboration, their special relationship of trust and confidence existed prior to, and apart from, the execution of the Services Agreement. The confidentiality provisions of the Services Agreement are, therefore, backstopped and strengthened by common-law and

⁴ Services Agreement § IV.A.1.

⁵ Services Agreement § IV.A.3.

⁶ Services Agreement § IV.A.4.

⁷ Services Agreement §§ I.C, II.B.1.

⁸ See, e.g., *Nicholson v. Shockey*, 192 Va. 270, 270 (1951).

contractual fiduciary duties which forbid any misuse or misappropriation of the NRA's information.

13. Consistent with the substantial scope and dollar value of the services rendered by AMc for the NRA, AMc invoices the NRA for a wide variety of expenses. The Services Agreement contains detailed guidelines identifying categories of expenses that can be invoiced to the NRA, and conditions for their reimbursement—for example, hotel and meal expenses must be specifically authorized in writing by the NRA. Over the parties' decades-long course of dealing, underlying receipts and other support for AMc's expenses were not transmitted contemporaneously with AMc's monthly invoices. However, the NRA was repeatedly assured that appropriate documentation was retained by AMc, and could be audited at the NRA's request. Indeed, the NRA's senior leadership understood that field audits of AMc's expense records were regularly conducted precisely for that purpose.

14. Given its responsibilities, AMc took an active role in shaping the public image of the NRA's principals and executives, including CEO Wayne LaPierre. Based on AMc's advice, and subject to billing procedures AMc set up, LaPierre over a fifteen year period incurred wardrobe and related expenses for countless television appearances, filming of commercials, and other outward-facing brand-development activities. Those activities were specifically directed, choreographed and produced by AMc. Records of the wardrobe expenses, which were initiated at AMc's direction, were maintained by AMc. Of course, AMc should not have incurred (let alone sought reimbursement for) any expenses which it believed inappropriate.

B. Troubled Waters: the NRA's Compliance Efforts and Ackerman's Response.

15. In recent years, the State of New York amended its Not-for-Profit Corporation Law (the "NPCL") to clarify requirements for director independence and the ratification of related-party contracts, among other items. After updating its internal policies and controls to reflect these

amendments, the NRA undertook to strengthen its procedures for documentation and verification of compliance by vendors with their contracts. Beginning in August 2018, the NRA sent letters to more than a hundred vendors—including AMc—that set forth updated invoice-support requirements and provided detailed guidance regarding, for example, expense reimbursement procedures.

16. During the course of this process, the NRA became aware of concerns raised by multiple employees, executives, and board members that AMc’s expenses and activities required greater oversight. In sum, there were concerns that Ackerman and Mercury were regularly taking advantage of their favored position and the numerous roles they played for the NRA. As a result, the Association sought to investigate several specific concerns:

- “Out of pocket” expenses that lacked meaningful documentation of NRA approvals, receipts, or other support, despite the requirements set forth in the Services Agreement;
- Lack of transparency regarding AMc’s annual budgets under the Services Agreement, as well as adherence to those budgets;
- Lack of transparency regarding AMc’s compliance with their obligation to insure that their services are provided at “fair market value”;
- Concerns that AMc was invoicing the NRA for the entire salaries attributable to NRA-Dedicated Personnel, despite certain NRA-Dedicated Personnel allocating substantial time to non-NRA clients;
- Refusal by AMc to provide any data “in writing” (such as viewership numbers, clickthrough rates, or related performance metrics) that enable the NRA to analyze the return on its substantial investment since 2016 in NRATV.⁹

17. Consistent with the broad scope and critical nature of the services performed by AMc for the NRA, the NRA bargained for transparency into AMc’s files, books and records

⁹ In addition, certain NRA stakeholders were also concerned that NRATV’s messaging—on topics far afield of the Second Amendment—deviated from the NRA’s core mission and values.

pursuant to the Services Agreement. Both the Previous Services Agreement and the current Services Agreement incorporate records-examination clauses that require AMc to open its files for the NRA's inspection upon reasonable notice. The full text of the Records-Examination Clause in the Services Agreement appears below:

Services Agreement

- Dated April 30, 2017 (as amended May 6, 2018)
- Between the NRA and "AMc" (defined to include both Ackerman and Mercury)

VIII. EXAMINATION OF RECORDS

During the term of this Services Agreement, AMc authorizes NRA, upon reasonable notice, to examine AMc and Mercury's files, books and records, with respect to matters covered under this Services Agreement.

18. During early- and mid-2018, the NRA sought information from AMc pursuant to the Records-Examination Clause on a common-interest basis to advance parties' mutual interests relating to an ongoing lawsuit. However, after the NRA began to request access to records that would shed light on concerns regarding AMc's business and accounting practices, AMc's responses became evasive and hostile.

19. In August 2018, within days after the NRA announced that it would now require supporting documentation to be transmitted contemporaneously with vendor invoices, a media outlet hostile to the NRA quoted "an anonymous source at Ackerman McQueen"¹⁰—creating serious concerns about AMc's compliance with its confidentiality obligations. When another outlet described the same source as a former (rather than a current) AMc employee,¹¹ the NRA's

¹⁰ Dylan Matthews, *The National Rifle Association, America's most powerful lobby, claims it's in financial crisis. What?*, VOX (Aug. 3, 2018, 4:50pm), <https://www.vox.com/2018/8/3/17648960/nra-national-rifle-association-companies-support-boycott-new-york-lawsuit>

¹¹ Alex Yablon & Mike Spies, *In Court Papers, NRA Stresses Financial Pressures and Says It May Have to Shut Down NRATV*, THE TRACE (Aug. 1, 2018), <https://www.thetrace.org/rounds/nra-carry-guard-insurance-new-york-lawsuit/>

trust in its longtime collaborator dissuaded it from requiring an immediate and full scale investigation. Unfortunately, it now appears that such a complete accounting is required.

20. On August 27, 2018, Winkler sent a letter to the NRA which purported to comply with the NRA's request for a more comprehensive audit of Ackerman's expense records. The letter pointedly identified several categories of items, some relating to travel and entertainment, which it warned would be encompassed in a full production of those records—perhaps believing that the threat of such disclosure would dampen the NRA's demands for transparency. However, the NRA was undeterred, and insisted upon reviewing and verifying details of expenses incurred.

21. In September 2018, for the first time in the parties' decades-long course of dealing, AMc demanded that its outside counsel supervise any document review conducted under the Records-Examination Clause, then demanded payment of outside counsel's legal fees as a precondition for delivery of video footage it produced and for which AMc had already invoiced the NRA. During a telephone call on September 19, 2018, after AMc's counsel insisted that the NRA pay AMc's legal fees without any insight into why the fees were incurred, the NRA's counsel observed that AMc's posture seemed more consistent with an adverse than a common-interest relationship. AMc's counsel then made a startling statement: "AMc views the relationship as adverse."

22. Thereafter, AMc strenuously resisted the NRA's efforts to enforce the Services Agreement, including by embarking on a campaign to "kill the messenger" when the NRA continued to seek access to documents or proposed reductions in AMc's budget. At first, AMc scapegoated the NRA's outside counsel. However, over ensuing months, AMc also refused to respond to basic information requests from NRA executives. After the NRA retained a third-party forensic accounting firm to interface with AMc in an effort to appease AMc and gain its

compliance in January 2019, AMc indicated it would cooperate. Unfortunately, that pledge of cooperation was short-lived, as AMc purported to forbid the accountants from disclosing simple, material information to the NRA—including copies of annual budgets against which AMc was invoicing. When the NRA's General Counsel sought additional information in follow-up to the forensic audit, AMc ignored his letters.

23. As AMc continued to stonewall the NRA's requests for documents and tensions between the parties rose, the NRA was contacted with increasing frequency by journalists acting on purported "leaks" relating to matters on which AMc had worked. The contents of these "leaks" reflected a malicious, out-of-context use of the NRA's confidential information, with an apparent intent to damage the NRA. Indeed, the NRA was advised by multiple confidential sources that leaks were emanating from AMc.

C. **When The NRA Sought Assurances That Ackerman Was Complying With Its Confidentiality Obligations, Ackerman Rebuffed the NRA.**

24. On April 12, 2019, having exhausted its good faith efforts to access key records pursuant to the Services Agreement, the NRA filed a narrowly tailored action in this Court seeking specific performance by AMc of its obligation to share relevant records with the NRA. In retaliation, rather than provide the requested records directly to the NRA (as the NRA had sought for months), AMc conspired with others to disseminate select, out-of-context portions of those records—many obsolete or dated—to a subset of the NRA Board of Directors, in order to sow false impressions regarding the NRA's spending and lend support for a possible executive coup..

25. On April 22, 2019, days before the NRA's Annual Meeting of Members, Winkler doubled down on the tactic he previewed in his August 27, 2018 letter. In letters to select NRA executives, Winkler referenced and excerpted certain expense records which had previously been withheld from the NRA. Importantly, Winkler did not contend—nor does the NRA believe—that

any of the referenced expenses were improper.¹² Nonetheless, they were obviously selected by Defendants to foster salacious, misleading impressions of the NRA's spending practices. Winkler's letters carried an implicit threat, made explicit in a subsequent series of telephone calls: If the NRA failed to withdraw its lawsuit seeking access to AMc's records, AMc would publicize portions of those records tailored to cause maximum reputational damage to the leadership of the NRA.

26. On April 24, 2019, AMc caused its employee, North, to telephone an aide of NRA CEO Wayne LaPierre ("LaPierre") and relay the contents of yet another letter that AMc purportedly planned to disseminate. North emphasized that the letter would be "bad" for LaPierre and the NRA, and he described a laundry list of allegations the letter would contain: an unfavorable (and untrue) depiction of the NRA's finances; sexual harassment accusations against an NRA staff member; and, as previewed in Winkler's letters, excerpts of wardrobe, travel, and entertainment expenses paid by AMc and then invoiced by it to the Association over the years.

27. Tellingly, several categories of information referenced by North consisted of the same information the NRA had tried, but failed, to elicit from AMc under the parties' contractual record-inspection clause. After withholding this information for more than six months in an attempt to stonewall the NRA's compliance efforts, AMc now threatened to strategically, selectively publicize the information in a manner calculated to cause harm to LaPierre and the Association. North stated that AMc would forbear from publicizing the "bad" letter if LaPierre agreed to withdraw the NRA's lawsuit seeking access to AMc's records, resign immediately from the NRA, and support North's continued tenure as NRA President. If LaPierre cooperated, North

¹² Indeed, if Winkler or anyone at AMc had believed the expenses were improper, then AMc's fiduciary obligations required it to inform the NRA of suspected accounting improprieties. Instead, for more than a decade, AMc invoiced the NRA for the expenses without any such comment.

indicated that he could “negotiate with” Ackerman co-founder Angus McQueen to secure an “excellent retirement” for LaPierre.

28. The NRA does not take kindly to threats—and neither did LaPierre. Rather than accede to AMc’s extortion, LaPierre wrote a letter to the NRA’s Board of Directors that gave a transparent account of AMc’s threat and concluded “so long as I have your confidence . . . I will not back down.” As became widely publicized, LaPierre prevailed—and AMc’s coup attempt failed. AMc’s employee, North, is no longer an officer of the NRA.

29. The NRA hoped that in the wake of these events, AMc would resume faithfully serving the NRA as the parties’ contract and Virginia law require. Unfortunately, the NRA continues to receive media inquiries that strongly suggest there are misleading, defamatory “leaks” emanating from AMc. Simply put, the NRA believes that AMc is now delivering on its extortion threat. Tellingly, much of the information “leaked” by AMc concerns travel, wardrobe, and other expenses incurred in connection with AMc projects, based on AMc’s advice, or on trips with itineraries crafted by AMc. Although it disseminates select portions of these records in an effort to convey misleading impressions about spending activities by the NRA’s leadership, AMc knows full well that these particular expenses were proper—because it was deeply involved in their incurrence.

30. Examples of media outlets to whom AMc directly or indirectly disclosed the NRA’s confidential information include The New York Times, The Wall Street Journal, The Daily Beast, and Rolling Stone.

31. To resolve its concerns regarding these disclosures, on May 6, 2019, the NRA requested that several key AMc employees execute sworn declarations attesting that they had not violated their confidentiality obligations under the Services Agreement. The NRA tailored its

request narrowly—seeking declarations only from senior executives who had exposure to the information at issue—and demanded simply that these executives affirm they had complied, and would continue to comply, with their clear legal duties.

32. To the NRA's dismay, AMc flatly refused to provide any cooperation or assurances whatsoever. The NRA brings this action to discover the full extent of AMc's breaches, enjoin those breaches, and recover compensation for the damage it has sustained.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT (Against Ackerman and Mercury)

33. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

34. The Services Agreement is a legally enforceable contract. The confidentiality provisions of Section IV of the Services Agreement are unambiguous, and bind "AMc" (defined to include both Ackerman and Mercury).

35. The NRA has performed all of its obligations under the Services Agreement.

36. Defendants have breached the provisions of Section IV of the Services Agreement by directly or indirectly disclosing, to third parties, information made known to AMc as a result of AMc's providing Services (as defined under the Services Agreement).

37. Defendants also breached the implied covenant of good faith and fair dealing by conspiring with, and causing, North to issue an extortion threat to the NRA.

38. Defendants' breaches have damaged the NRA. Among other things, the NRA has incurred significant reputational damage, and professional fees, as a result of Defendants' bad-faith, out-of-context "leaks" to reporters. For example, the NRA's attorneys and public affairs

professionals have spent extensive hours fielding inquiries from journalists in an effort to correct the misleading impressions sown by AMc.

39. Defendants' breaches are escalating, and there can be little doubt that if its collaborator of multiple decades continues to maliciously disseminate its confidential information, the NRA will be irreparably harmed. The NRA is entitled to injunctive relief to avert or minimize this irreparable harm.

40. Moreover, AMc's breaches are material—by seeking to destroy the NRA's reputation, AMc has destroyed the purpose of the parties' contract. Accordingly, the NRA is entitled to damages based on all of its remaining rights to performance under the Services Agreement.¹³

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY (Against Ackerman and Mercury)

41. Plaintiff incorporates by reference and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

42. Over the course of more than thirty years of close collaboration (including decades that preceded the Services Agreement), the NRA reposed extensive trust and confidence in both Ackerman and Mercury. Defendants therefore incurred a common-law fiduciary duty to put the NRA's interests first when rendering services to the NRA, including pursuant to the Services Agreement.

43. In addition, AMc incurred fiduciary duties to the NRA when it acted as the NRA's agent pursuant to multiple provisions of the Services Agreement. For example, on the NRA's

¹³ See Restatement (Second) of Contracts § 236 (1981).

behalf and subject to the NRA's control, AMc entered into contracts and arrangements for the purchase, planning, and placement of media—activities that required AMc to be entrusted with sensitive confidential information pertaining to the NRA.

44. Because it acted in a fiduciary capacity, AMc had a duty of loyalty to the NRA which forbade it from misusing the NRA's confidential information—especially with the malicious intent to damage the NRA.

45. Furthermore, because it acted in a fiduciary capacity, AMc had a duty to disclose all material facts to the NRA regarding the advice and services it provided.

46. AMc breached its fiduciary duty when it conspired to effect an out-of-context, partial disclosure of certain NRA confidential information to (i) a handpicked group of outside directors of the NRA, as well as (ii) the news media.

47. AMc further breached its fiduciary duty by withholding material information from the NRA, including information concerning expense records and the performance of NRATV.

48. Ackerman further breached its fiduciary duties of loyalty and fair dealing by conspiring with and causing its employee, North, to relay an extortion threat to the NRA on April 24, 2019.

49. As a direct and proximate result of AMc's breaches, the NRA has incurred damages, including professional fees expended to redress the consequences of AMc's "leaks." AMc's breaches are escalating, and there can be little doubt that if its collaborator of multiple decades continues to maliciously disseminate its confidential information, the NRA will be irreparably harmed. The NRA is entitled to injunctive relief to avert or minimize this irreparable harm.

50. The NRA furthermore seeks disgorgement of any amounts wrongfully obtained by Defendants on account of their breaches of their fiduciary duties including, without limitation, all fees paid by the NRA to Ackerman and Mercury since the date such breaches began—which the NRA believes occurred no later than August 3, 2018.

DEMAND FOR JURY TRIAL

51. Plaintiff hereby demands a trial by jury on all issues of fact to which it is entitled to a jury trial in this cause.

REQUEST FOR RELIEF

Wherefore, for all the forgoing reasons, Plaintiff requests judgment in its favor against AMc:

- a. Granting it preliminary and permanent injunctive relief;
- b. Granting it compensatory damages for material, total breach of contract and breach of fiduciary duty totaling \$40 million;
- c. Granting it punitive or exemplary damages; and
- d. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted,



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